

SUPREME COURT OF WISCONSIN
OFFICE OF LAWYER REGULATION

Public Reprimand With Consent

William P. Skemp
Attorney at Law

08-OLR-7

FIRST MATTER

In December 1998, a heating and air-conditioning company installed a 250 gallon fuel oil tank at the residence of a couple (the “Clients”) in a city in Wisconsin (the “Property”). Shortly after installation, the tank was filled and collapsed, severing an oil line and allowing the fuel oil to dissipate across the land and into the Clients’ home.

In January 1999, the Clients hired an excavating company to clean up the spill, which company removed approximately 90 tons of soil from the area, replacing it with sand. The Clients later hired Attorney William P. Skemp to represent them to recover damages from the heating and air-conditioning company.

After the excavating company completed its work Skemp, a hydrogeologist (“Expert”) was hired to investigate the site and make recommendations as to appropriate remediation. Expert inspected the Property. In April 1999, Expert a issued a written report on his findings, in which he concluded that despite the removal of approximately 90 tons of contaminated soil from the Property, the concrete block of the basement wall continued to be saturated with fuel oil, contaminated “native soil” remained at the site, contamination of the drinking water from the well on the site was possible, and the sand

back-fill which was put in place of the soil would cause seepage into the basement during wet weather. Expert recommended that: (1) the portion of the block wall saturated with fuel oil be replaced; (2) the remaining contaminated soil by the basement wall and beneath the basement floor be removed; and (3) back-fill be sloped to prevent seepage into the basement. The estimated cost was \$50,000. Expert explained that the purpose of this initial report was to demonstrate the reduction in value of the Property for a civil lawsuit against the heating and air-conditioning company. Skemp read Expert's report.

Shortly after receiving Expert's report, Skemp filed a summons and complaint on behalf of the Clients against the heating and air-conditioning company. Skemp named Expert as an expert witness in the litigation. Skemp also named a realtor ("Realtor") as an expert as to the diminished value of the Property after the oil spill.

Skemp referred the Clients to Realtor for real estate broker services. In November 2000, Realtor posted the Property for sale on a multiple listing service with an asking price of \$99,500.00. According to Mr. Client, Skemp was "holding our hand" through the entire real estate sale process. According to Realtor, during the time period between November 2000 and April 2001, the Clients relied on Skemp to review each of the documents they executed. These documents included a real estate condition report, reviewed by Skemp, which referred to the oil spill and the Expert's that was made a part of the real estate condition report by reference. The real estate condition report also indicated that the Clients were aware of (a) defects in the well; (b) defects in the basement or foundation; (c) defects caused by unsafe concentrations of hazardous substances; (d) regulations requiring corrections of an existing condition; and (e) "other defects affecting the property."

In March 2001, the Clients' litigation was settled short of trial. Shortly after the settlement of the litigation, a buyer made a \$20,000 offer. The Clients called Skemp to obtain his opinion on the offer. Skemp recommended refusing the offer. Skemp explained the Clients then called again asking his opinion about a \$25,000 offer. Skemp told them to refuse the offer and try to obtain another offer. Skemp denied he represented them at that point in time because, according to Skemp, his representation concluded with the settlement of the Clients' case. Skemp does not believe that he reviewed real estate documents for any proposed transactions for the Clients.

In April 2001, another party made a \$30,000 offer to purchase the Property. According to Realtor, the offer to purchase was discussed at a meeting at Skemp's office, attended by Realtor, the Clients and Skemp. When the Clients indicated they would be willing to accept the offer, Skemp made a matching offer immediately. Realtor met with the Clients separate from Skemp and presented them with both offers. According to the Clients, this occurred either in the hallway of Skemp's office or in Skemp's office. Realtor recommended they accept Skemp's offer as Skemp was aware of the condition of the Property and would have no grounds for complaint later. The Clients accepted Skemp's offer.

The bank financing the purchase requested information about the oil spill. Expert submitted a report to the bank as to the minimum steps necessary to make the Property "habitable." Expert advised that the cost of restoring the Property to pre-spill condition would be approximately \$50,000.00, but the premises would be made "habitable and reasonably free of toxic noxious odors" if (a) the basement wall and floor was coated with a product "resistant to fuel oil and adherent to concrete" and (b) a "negative pressure

system beneath the basement floor” were installed. This letter was copied to the Clients and Skemp.

Expert and Skemp both recalled a conversation in or about May 2001 in which they discussed these minimum requirements. Expert also advised Skemp of “the continuing contamination of the property, and the remediation necessary to restore the property to its pre-oil spill condition would have to be disclosed if the property were to be resold.” According to Expert, he also notified Skemp and Realtor that the Property would be difficult to sell if these matters were fully and completely disclosed.

In late May 2001, the sale to Skemp closed and the Clients executed a warranty deed to Skemp in exchange for the purchase price of \$30,000. After purchasing the Property, Skemp rented it to two tenants.

In March 2004, Skemp’s second tenant (“Tenant”) moved in and stayed through September 2004. Tenant was allowed to live in the Property in exchange for making certain improvements to the Property. Tenant put on a new front and back deck, sheet rocked a third of the basement, improved the plumbing, cabinets, and garage, and did landscaping improvements. Tenant also painted the entire house, including the interior basement walls. Tenant did not use any “special paint” for the basement. Tenant caulked and used expansion foam to fill a crack in the back wall. Tenant stated that he knew nothing about Expert’s recommendations to clean up the Property.

According to Skemp, he believed no further remediation was necessary as Tenant had painted the basement, caulked and filled the back wall, and the soil was slope away from the residence to prevent leakage in the basement where sand replaced the native

soil. Skemp acknowledged that the walls and foundation of the Property were not replaced, the walls were not specially treated, and no negative pressure system was installed, as recommended by Expert. While Skemp owned the property, a water sample was tested and proved to be negative for bacteria and nitrates, but the water was not tested for petroleum contamination. According to Skemp, neither of his tenants ever complained about oil odor, a leaky basement, or other problems related to the spill.

In July 2004, Skemp again had Realtor list the Property for sale, with an asking price of \$129,500.00. The listing provided, "Remarks ... 6 years ago had a [sic] oil spill water well or ground has been tested and shows no sign of contamination ...". Skemp explained the price was appropriate because of Tenant's improvements.

A potential buyer ("Buyer") first learned of the Property on a computer website. Buyer contacted her realtor about the Property. Buyer and her realtor then visited the Property. Tenant showed them around the Property. In August 2004, after visiting the Property, Buyer executed an offer to purchase for the listing price of \$129,500.00. Skemp accepted Buyer's offer. Though there is evidence Buyer was given a promotional brochure that made brief mention of the oil spill and that she was informed of the oil spill by either Tenant or Buyer's realtor, Buyer denied knowing about the oil spill prior to executing the offer to purchase, and further denied seeing any multiple listing service references to an oil spill or tank collapse.

Prior to the closing, Skemp signed a real estate condition report regarding the Property in which Skemp stated he was unaware of any defects in the well, including unsafe well water, was unaware of defects in the basement or foundation and was

unaware of defects caused by unsafe concentrations of, or unsafe conditions relating to ... “other potentially hazardous or toxic substances on the premises.” The real estate condition report indicated a fuel storage tank was previously located on the Property but had been removed. The report made no mention of the oil spill. Buyer later read and signed the real estate condition report.

The closing of the sale to Buyer occurred in September 2004. Realtor, Buyer, her realtor, and a bank representative were present at the closing. Skemp was not present. The settlement statement was signed by the Realtor on behalf of Skemp. At the closing there was no mention of an oil spill or remediation thereof. Skemp never met or spoke with Buyer.

Buyer moved into the Property a couple of weeks later. According to Buyer, she first learned of the oil spill when the tax assessor visited her at the Property and questioned Buyer about the condition of the Property and the extent of the remedial action completed in accordance with Expert’s report. Buyer then contacted her realtor to discuss the matter, who in turn contacted Skemp and Realtor about the possible contamination. Thereafter, Buyer began to notice an oil smell in the basement. The basement leaked, resulting in wet carpeting and a mold smell. According to Expert, as of April 2006, to his knowledge none of his recommended corrective or remedial measures had been completed.

By entering into an agreement to purchase the real property of Clients, whom Skemp represented in litigation relating to such real property and who sought advice from Skemp regarding the sale of the real property, without the Clients being given reasonable

opportunity to seek the advice of independent counsel and without the Clients consenting in writing, Skemp violated former SCR 20:1.8(a) (effective through June 30, 2007), which provides, “A lawyer shall not enter into a business transaction with a client or knowingly acquire ownership, possessory, security or other pecuniary interest adverse to a client unless: (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client; (2) the client is given reasonable opportunity to seek the advice of independent counsel in the transaction; and (3) the client consents in writing thereto.

By failing to advise Buyer of the existence of the fuel oil spill on the real property that he sold to her even though he was aware of the spill, was aware of the expert reports regarding the steps necessary to return the property to pre-spill condition or at least make the property habitable, and was aware the expert recommendations were not followed, Skemp violated SCR 20:8.4(c), which provides, “It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.”

SECOND MATTER

In June 1999, a man (“Client”) underwent surgery at UW Hospital in Madison, Wisconsin, and foreign material was left in his body, causing an ongoing staph infection, then additional hospitalizations, surgeries, and ongoing pain and suffering. During a subsequent surgery on April 6, 2005, doctors removed from Client a portion of the infected foreign objects that had been left inside him during the 1999 surgery.

Apparently, however, doctors determined that they could not remove all of the foreign material at that time.

In July 2005, Client and his wife (“Mrs. Client”), from Janesville, hired Attorney William P. Skemp, from La Crosse, to represent them in a medical malpractice claim against UW Hospital, doctors and staff. On September 14, 2005, Skemp’s associate sent the Clients a letter enclosing a 1/3 contingent fee agreement and a Notice of Claim for Damages. In the letter, Skemp’s associate stated, “The costs associated with prosecuting a claim of this type are considerable and we ask that you make nominal payments monthly to help defray the costs.” The Clients signed and returned both the fee agreement and the Notice of Claim for Damages and sent a check in the amount of \$600. Between October 2005 and September 2006, the Clients made almost regular monthly payments, usually in the amount of \$250, as advances for costs. According to an accounting provided by Skemp, the Clients paid a total of \$3,800 for costs associated with the litigation, which amount was later refunded.

On September 19, 2005, Skemp’s firm filed the Notice of Claim for Damages and served copies of it upon the defendants and the Wisconsin Attorney General. Between July and November 2005, the Clients sent a number of email messages regarding the drafting of the Complaint and which parties to name as defendants, with Skemp’s associate responding to several of these. On November 17, 2005, Skemp’s associate sent the Clients an email advising them on the status of the matter, explaining the medical records were being reviewed by Skemp’s medical consultant and that they had not heard back from the Attorney General’s Office.

On January 6, 2006, Skemp sent the Clients a letter in which he stated, “My Nurse Consultant has now prepared for me a report on her review of your medical records and attached is a copy of that review.” Thereafter, in January and February 2006, Client sent several emails to Skemp’s associate regarding the contents of such report, indicating for the most part that the report was correct, with some modifications and corrections. Between late February and early April 2006, Client sent Skemp and his associate several emails seeking a status update. On April 6, 2006, Client sent Skemp an email explaining that despite numerous requests for information about his case he had heard nothing since January 2006.

In May 2006, Skemp’s associate discontinued his employment at Skemp’s firm. Skemp later then found that the associate had not completed drafting the Complaint in the Clients’ matter. In June 2006, Client spoke briefly by telephone with Skemp, who acknowledged that the case was a mess and he would work on it. On July 11, 2006, Skemp sent the Clients a letter, apologizing for the delay in communication and indicating that Skemp was working on the file would be in touch with the Clients the following week.

Skemp explained that he and his nurse expert reviewed the file and it was decided that the original cause of action was probably incorrect and they studied and researched the alternate causes of action. Ultimately, Skemp decided that the initial claim, that of leaving a foreign objects in Client at the time of surgery was not the cause of his subsequent problems, but that the failure of the doctors in the years following this to properly diagnose and treat Client’s medical condition, namely an abscess and infection, was responsible for his continued illness. On July 24, 2006, Skemp sent the Clients a

letter, in which he explained that he was drafting the Complaint and wanted to meet with the Clients in La Crosse to discuss and finalize it.

During August 2006, Client telephoned Skemp's office and left several messages for him. On August 15, 2006, Client sent Skemp an email, indicating that the Clients had sent several emails indicating they would come to La Crosse, but were still waiting to hear back from Skemp about an appointment time. On August 25, 2006, Client telephoned Skemp, who indicated that he had sent out the Complaint for the Clients' review two weeks earlier and that he would send out another draft. Skemp asked the Clients to call him back after they had reviewed the Complaint. On August 25, 2006, Skemp sent the Clients a letter enclosing a draft of the Complaint for their final review.

Between September 6 and December 20, 2006, the Clients sent Skemp a number of letters and emails and also telephoned him numerous times leaving messages for him. Skemp did not respond. Having heard nothing from Skemp, the Clients contacted another attorney ("Attorney") regarding a potential action against Skemp. On November 16, 2006, Attorney sent Skemp a letter requesting that Skemp respond about the status of the case. On December 5, 2006, Attorney sent Skemp another letter regarding the status of the Clients' case.

Skemp responded by letter to Attorney on December 7, 2006, in which Skemp stated that he was working on the file and would give Client and Attorney a status report the following week. On December 20, 2006, Skemp sent the Clients a letter enclosing a second draft of the Complaint, with modifications to the claims and the named defendants. Shortly thereafter, Client spoke with Skemp by telephone and told him to file

the Complaint. The Clients signed and returned this draft to Skemp. On December 27, 2006, Client sent Skemp an email, advising that he wanted Skemp to continue to represent him and to proceed in the matter. On December 28, 2006, Attorney sent Skemp a letter, in which he stated it appeared communication had been restored and Attorney was stepping out of the way.

Thereafter, the Clients did not hear back from Skemp. Between January and April 2007, the Clients sent Skemp emails and left voice mail messages. Skemp did not respond. Therefore, on April 6, 2007, the Clients filed a grievance against Skemp with OLR.

In July 2007, the Clients sent Skemp a letter and an email and left voicemails regarding Skemp continuing as their attorney. On August 28, 2007, Skemp sent the Clients a letter, indicating he was not sure if the Clients wanted him to continue as their attorney, but he had prepared a revised Complaint. In his letter, Skemp stated, "I don't want to presume to forward it to you if, in fact, you don't expect me to do anything further on your behalf and want me to return to you all file materials that you have sent to this office and return money to you which remains in our trust account. Please promptly let me know your wishes and I will continue to work towards the drafting of the pleadings to get our litigation started." On September 6, 2007, Client left a message indicating he wanted Skemp to represent him.

On September 18, 2007, Skemp sent the Clients the Complaint for their review. Thereafter, Clients sent Skemp several letters regarding questions and concerns they had. In their October 3, 2007 letter, the Clients stated, "This most recent draft causes great

concern. We need some answers before we can make a decision.” On October 10, 2007, Skemp sent the Clients a letter admitting that communication between them had been poor and that further review of the case showed that it was not as strong as it may have seemed at the beginning. Skemp indicated he wanted to meet with the Clients in Janesville to finalize the Complaint. Skemp did not travel to Janesville because of Skemp’s own medical issues.

Between October and November 2007, the Clients telephoned and emailed Skemp numerous times about meeting with him and discussing the contents of the Complaint. On November 30, 2007, Skemp telephoned the Clients and informed them he had a final draft and would send it to them. On December 7, 2007, Skemp sent the Clients a letter enclosing a Request for Mediation, which Skemp explained had to be filed before filing the Complaint.

On December 19, 2007, Client sent Skemp an email indicating that the Clients had not authorized Skemp to file the Request for Mediation, and indicating such document contained inaccurate information about the case. Client requested a return of all his records, notes and receipts, a complete refund of costs the Clients paid, and Skemp’s insurance information. Skemp understood this email to be a termination of his representation of the Clients. On February 4, 2008, Skemp sent the Clients a letter explaining that their attorney-client relationship was terminated and enclosing an accounting of all the funds they paid, a check payable to them in the amount of \$3,550.00, and an un-cashed check in the amount of \$250.00. By separate cover letter, Skemp returned the Clients’ entire file to them.

Having been hired in July 2005, by failing to advance the Clients' interests in any appreciable manner up to the point of termination of the attorney-client relationship in late 2007, including failing to commence an action or make any kind of filing in the matter on behalf of the Clients, Attorney William P. Skemp violated SCR 20:1.3, which provides, "A lawyer shall act with reasonable diligence and promptness in representing a client."

By failing to keep the Clients informed of the status of their medical malpractice case and respond to their numerous requests for information regarding such case between September 2006 and July 2007, Attorney William P. Skemp violated former SCR 20:1.4(a) (effective through June 30, 2007), which states, "A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information."

Skemp has two prior private reprimands, one in 1980 and one in 1990.

For the above misconduct, and in accordance with SCR 22.09(3), Attorney William P. Skemp is hereby publicly reprimanded.

Dated this 14th day of July, 2008.

SUPREME COURT OF WISCONSIN

/s/ Kevin Lee Ferguson
Honorable Kevin Lee Ferguson, Referee